

VZCZCXYZ0014
RR RUEHWEB

DE RUEHKV #0099/01 0170259
ZNR UUUUU ZZH
R 170259Z JAN 08
FM AMEMBASSY KYIV
TO RUEHC/SECSTATE WASHDC 4724
INFO RUEATRS/DEPT OF TREASURY WASHDC
RUCPDOG/USDOC WASHDC
RUCPCIM/CIMS NTDB WASHDC

UNCLAS KYIV 000099

SIPDIS

SIPDIS

STATE FOR EB/IFD/OIA (JNHATCHER) AND EUR/UMB
STATE PLEASE PASS TO USTR FOR PBURKEAD
USDOC FOR 4201/DOC/ITA/MAC/BISNIS
USDOC FOR 4231/ITA/OEENIS/NISD/CLUCYCK

E.O. 12958: N/A

TAGS: [EINV](#) [EFIN](#) [ETRD](#) [KTDB](#) [OPIC](#) [USTR](#) [UP](#)

SUBJECT: UKRAINE: 2008 INVESTMENT CLIMATE STATEMENT, PART I

REF: 2007 STATE 158802

1. As requested reftel, below is Part I of the 2008 Investment Climate Statement (ICS) for Ukraine. Post is transmitting the ICS in two separate parts due to its large size. Post will send the ICS in Microsoft Word version to EB/IFD/OIA by email.

Begin Text:

A.1. Openness to Foreign Investment

GOVERNMENT'S ATTITUDE TOWARDS FOREIGN INVESTMENT

Since taking office in January 2005, President Viktor Yushchenko has made improving the investment climate one of his top economic policy goals. While progress has not been as swift as some may have hoped, almost all of Ukraine's major political forces remain committed to improving the business and investment climate. There have been several positive steps for U.S.-Ukraine trade and investment relations over the past several years. Both the United States and the European Union granted Ukraine market economy status, in February 2006 and December 2005, respectively. In March 2006 the United States terminated the application of the Jackson-Vanik amendment to the Trade Act of 1974 to Ukraine, providing Ukraine permanent normal trade relations status.

After eight years of decline following independence, the Ukrainian economy has been growing steadily since 1999, with real GDP growth at about 7% in 2007. Over the past few years, Ukraine has taken steps to liberalize its markets, reduce regulation, eliminate most licensing requirements, eliminate most restrictions on foreign exchange, and begin the transformation of the agricultural sector from state-run farms to private agriculture. After years of hyperinflation and plummeting currency values, the national currency, the hryvnia (UAH), has been stable against the U.S. dollar for over six years. The inflation rate remains high, however, and was 16.6% in 2007. Ukraine remains in need of substantial reforms in order to achieve full economic liberalization. Ukraine's economy is still shackled by corruption, poorly developed rule of law, over-regulation, and excessive government interference in what should be private business decisions.

Ukraine is in the process of negotiating terms of accession to the World Trade Organization (WTO). Ukraine made significant progress during 2007 in adopting legislation and regulations needed for compliance with WTO

requirements, enacting some 11 WTO-related laws in May and adding to its steady progress in this area during the previous three years. Ukraine also made a major breakthrough in signing a bilateral market access agreement with Kyrgyzstan, the last such agreement outstanding. Ukraine had signed a bilateral agreement with the United States in March 2006. Accession to the WTO remains a priority for the government and now appears imminent.

Foreign investors continued to express little confidence in the Ukrainian court system. In a noticeable number of cases, predatory minority shareholders have been able to procure dubious court decisions in an effort to wrest control of companies away from the majority investors. Some researchers claim that as many as 2,500 Ukrainian enterprises have suffered so-called corporate hijacking attempts in the last several years. Ukrainian courts have a long record of striking down or ignoring contractual provisions that assign legal responsibility for dispute resolution to a foreign court or arbitrator.

Many investor complaints over the years have involved the State Tax Administration's (STA) selective enforcement of tax policy. Businesses have claimed that STA local and regional branches use investigative authority to advance favored political or business interests. Arrears in the payment of VAT refunds to exporters have also been a serious problem. The GOU decreased the pace of VAT refunds beginning in August 2006, reimbursing only 76 percent of verified claims, down from 87 percent refunded in 2005. VAT refund problems continued in 2007, leading to calls for an overhaul of the VAT reimbursement mechanism. Delays in reimbursements can create opportunities for tax officials to demand kickbacks in return for quicker processing of rebates. Numerous exporting companies, both Ukrainian and foreign, claim that STA officials openly expect bribes between 10 and 30 percent of outstanding VAT refunds in order to process reimbursement. Currently, the process for obtaining a refund of VAT payments can take from 3 to 18 months for foreign companies. Increasingly, the delays in reimbursement are becoming an important cost factor for many foreign companies and are seriously affecting the profitability of planned investments.

MAJOR LAWS/RULES AFFECTING FOREIGN INVESTMENT

Ukraine's Law "On the Foreign Investment Regime" (1996) provides for equal treatment of foreign and Ukrainian-owned business with some restrictions in broadcasting and weapons manufacturing.

Both a new Civil Code and a competing new Commercial Code went into effect on January 1, 2004. Lawyers and judges continue to grapple with how to implement the two laws, whose approaches to the regulation of business activities are contradictory. The Commercial Code has a number of provisions considered to be incompatible with market economics, and most experts believe it should be eliminated entirely.

In October 2001, the Ukrainian Parliament passed a Land Code. It provides for private ownership of land, facilitating the privatization of land for agricultural purposes, but also provides for a moratorium on agricultural land sales. This moratorium has been extended until the GOU succeeds in adopting new legislation necessary to open the land market. This legislation has been drafted, but prospects for its enactment are currently unclear. The moratorium blocks private investors from purchasing some of the 33 million hectares of agricultural land in Ukraine and constitutes a serious obstacle to the development of the sector. The Land Code also prohibits foreign ownership of farmland.

A new Customs Code that went into effect in January 2004, along with December 2005 amendments to the Customs Code and Single Customs Tariff, brought Ukraine's customs regime into near-complete compliance with WTO rules. Problems,

particularly in the area of customs valuation, remain, however, and industry representatives have expressed concern with current draft amendments meant to fix the Customs Code. Cabinet of Ministers Resolution #269 from 2005 introduced preliminary documentary control at customs checkpoints in order to simplify customs clearance of goods entering Ukraine, and to reduce the wait time for importers. Implementation of this resolution has been imperfect, however, as imported goods entering Ukraine often still must be "cleared" by a number of state bodies, some of which do not operate 24 hours a day, causing extended delays. Corruption also remains a serious problem. President Yushchenko pushed in November 2007 for the dismissal of several high-level Customs officials and for the creation of a new body within the State Security Service to combat smuggling. Prime Minister Yuliya Tymoshenko announced in January 2008 that her government would restart an anti-smuggling campaign that had had some success back in 2005.

Under the 2001 Law "On the Customs Tariff of Ukraine," only Parliament can introduce or change tariffs. The import tariff system of Ukraine has 21 sections, encompasses 97 groups of goods, and lists over 11,000 import duty rates. In 2005, Parliament passed amendments to the Customs Code to decrease tariff rates in an effort to meet WTO accession requirements. The average applied tariff rate for all goods is now 6.5 percent, and 61.5 percent of the total tariff lines face ad valorem rates of five percent or less. For agricultural goods, the average applied rate is 13.8 percent (down from 19.7 percent) and for industrial goods the average applied rate is 4.4 percent (down from 8.3 percent).

Ukraine's Anti-Monopoly Committee implements anti-monopoly, competition, and consumer protection legislation under the March 2002 Law "On Protection of Economic Competition." New companies and mergers/acquisitions face strict controls. Most investments, joint ventures with multiple partners, and share acquisitions require the Committee's approval. Those violating fair competition rules may be fined up to 10% of the prior year's turnover. If unfairly gained profit exceeds 10% of income, up to three times the normal penalty can be collected. The applicant, defendant, or a third party may appeal a Committee decision, but the appeal must be filed within two months after the decision is taken.

PRIVATIZATION AND FOREIGN PARTICIPATION

The State Property Fund oversees the privatization process in Ukraine. Privatization rules generally apply to both foreign and domestic investors, and, in theory, a relatively level playing field exists. Observers claim, however, that a common abuse of privatization laws is the adjustment of the terms of a privatization contest to fit the characteristics of a certain, pre-selected bidder. Few major, new privatizations have been conducted since the privatization rush of 2004. As of September 2007, revenues from privatization were only 15.4 percent (\$320 million) of the fiscal year's budget target. In 2005, the GOU revoked the privatization of the Krivorizhstal steel factory, which had been sold to a group of domestic investors for \$800 million, and subsequently sold it in a fair and transparent tender to Mittal Steel for \$4.8 billion. Since then, the GOU has taken no further steps to reverse previous privatizations, although Prime Minister Tymoshenko has stated she expects the government may stage re-privatizations in a handful of cases where the courts have overturned privatizations.

The few privatizations that took place in 2007 were often marked by controversy. In March, the State Property Fund sold a majority share in Luganskteplovoy (a Ukrainian locomotive manufacturer) to Russian-owned CJSC Bryansk Machine Building Plant. Only two bidders (both related parties) were able to meet the tender requirements as set by the State Property Fund, and the Fund also appeared to

have violated rules governing the announcement of the tender, making it impossible for potential investors to learn of the tender in time to submit bids. The courts subsequently ruled that the sale was in fact illegal.

In August, the state-owned electricity generation company Dniproenergo increased its capital by 52 percent, allowing the Donbas Fuel and Energy Company (DTEK), owned by a Member of Parliament in the then-ruling coalition, to purchase the fresh capital and causing the state's share in the company to shrink from 76 percent to 50 percent plus one share. The transfer was conducted as a controversial debt-for-shares swap, whereby DTEK acquired the shares in exchange for covering a debt owed by Dniproenergo to coal suppliers. Some experts claimed that DTEK acquired the shares in Dniproenergo for only 30-40 percent of the market value. A court of first instance ruled the sale to be illegal, but an appeal is pending.

Ukrainian law authorizes the government to set limits on foreign participation in "strategically important areas," although the wording is vague and rarely used in practice. Some strategically important companies, including natural monopolies, producers of military equipment, and some fuel and energy companies, are barred from privatization and foreign ownership. A company's "strategic status" can be lifted by Parliament, on the recommendation of the Cabinet of Ministers, and foreign entities would then be allowed to participate in its privatization. Foreign shares of TV and radio broadcasting and publishing companies are restricted, and can generally not exceed 30%. In January, 2006, Parliament adopted a new law "On Television and Radio Broadcasting" that eliminated restrictions on the share of foreign capital in the charter funds of television and radio broadcasting companies. Foreigners are prohibited from founding TV or radio stations, however.

PROCUREMENT

Ukraine is not currently a signatory to the WTO Agreement on Government Procurement (GPA), but will become an observer to the GPA upon WTO accession, and has promised to then begin negotiations to accede to the GPA.

Most experts agree that recent amendments to the law "On Procurement of Goods, Works and Services Using State Funds" have been a step backwards in terms of bringing Ukraine's procurement system into compliance with international norms. A recent study on Ukraine by the Atlantic Council of the United States concluded that "government procurement is one of the most corrupt spheres of state activity." Amendments to the procurement law passed in March 2006 transferred the authority to coordinate government procurement from the Ministry of Economy to the Anti-Monopoly Committee of Ukraine, a body with no particular expertise in regulating public procurement, and one that has struggled to secure compliance with its own rulings. The amendments scattered policy and oversight functions across several bodies, including the Anti-Monopoly Committee, the Accounting Chamber of Ukraine (reporting to Parliament), the State Control and Audit Unit (under the Ministry of Finance), and the Tender Chamber of Ukraine. The amendments have been criticized for creating an overlap in authority of various regulatory agencies and decreasing the transparency of the system.

The 2006 amendments granted the Tender Chamber of Ukraine, purportedly a non-governmental organization for monitoring the procurement process, a number of key operational functions that are inherently governmental. The Tender Chamber has exclusive authority to maintain a catalog of bidders, consider claims of tender participants, and issue conclusions. It also maintains a UAH 7000 (\$1400) obligatory fee for bidders that want to be registered in the catalogue, in conflict with the international practice of free listing for all interested parties. The Tender Chamber has faced widespread criticism, including from some of its former members, as contributing to the procurement

system's corruption and lack of transparency.

The March 2006 amendments also introduced special security requirements for websites in order to be eligible for tender announcements. Only one organization, the European Consulting Agency, a Ukrainian private enterprise with links to the Tender Chamber, has been allowed to operate a website announcing tenders. Several observers have charged that this intermediary fosters corruption in the process and decreases transparency. In addition, the March 2006 amendments introduced burdensome and lengthy procurement procedures, and required all tender proposals to be secured by collateral, limiting the number of tender participants and increasing the cost of participation. For some procurements, the Tender Chamber assesses fees at four percent of the value of the procurement, which in many cases makes the fees extremely high by international norms.

December 2006 amendments to the law created a legion of special public sectors, such as defense, postal and telecommunications services, and railways, for which procurement rules do not apply for all tenders. Yet the December 2006 amendments also required most state-owned and municipal companies to follow state procurement procedures, resulting in some disruptions, most notably for procurement done by municipal hospitals and the military. Parliament attempted to amend the law again in June 2007 in order to exempt all state-owned enterprises from government procurement rules, but the President and the Kyiv Commercial Court blocked the amendment from taking effect.

All government procurement of goods and services valued at more than \$10,000 and works valued at more than \$80,000 must be procured through competitive tenders. Open international tenders must be used when procurement is financed by any entity outside of Ukraine. The Tender Chamber publishes information on government procurement in the "State Procurement Bulletin."

The procurement law does not restrict foreign enterprises from participating in government procurement, but in practice foreign companies are rarely able to compete on an equal footing. Foreign companies generally win only a tiny fraction of the total tenders (0.01 percent during the first nine months of 2006, with no more recent statistics available). Among the problems faced by foreign firms are: (1) the lack of public notice of tender rules and requirements; (2) covert preferences in tender awards; (3) subjecting awards to conditions that were not part of the original tender requirements; and (4) non-effective grievance and dispute resolution mechanisms, which often allow a losing bidder to block the tender after the contract has been awarded. March 2007 amendments to the law did eliminate preferential provisions in favor of domestic bidders on tenders below certain values. Some regulations still serve to exclude foreign bidders, however. For example, there is a practice in health sector procurement of only accepting bids from Ukrainian resellers or Ukrainian producers of pharmaceuticals.

The Law "On Production Sharing Agreements" (PSA), effective October 1999, provides a legal framework guaranteeing that the terms of agreements between foreign investors and the GOU for natural resources development cannot be changed once an investment is made. However, additional enabling legislation is needed in order to harmonize Ukrainian laws with the PSA's joint exploration and production license. Also needed are Cabinet of Ministers resolutions to establish special tax benefits envisioned by the PSA law, such as the amount of profit tax revenue the government will receive from the PSA producer. The development of PSAs was tested after the GOU awarded the U.S. company Vanco a tender for the Prikercheskiy block for offshore oil exploration in the Black Sea in April, 2006. Vanco and the GOU signed Ukraine's first-ever production sharing agreement in October 2007. It is unclear, however, if the GOU is willing to pursue additional PSAs for offshore exploration at this time, especially since additional PSA

legislation is still required.

A.2. Conversion and Transfer Policies

RESTRICTIONS ON CONVERTING/TRANSFERRING FUNDS

The 1996 Law "On Foreign Investment" guarantees the "unhindered transfer" of profits, revenues, and other proceeds in foreign currency after taxes and other mandatory payments. By intervening in exchange markets, the National Bank of Ukraine (NBU) maintains a de facto peg of Ukraine's currency, the hryvnia, to the dollar. In 2007, the hryvnia traded against the U.S. dollar at or near UAH 5.05 to the dollar.

While foreign investors may repatriate earnings, companies must obtain a license from the NBU for some operations. For repatriation of hard currency, each transaction over \$50,000 must be approved by the NBU. The NBU also charges a fee to review the transaction. In view of increased hard currency inflows, the NBU in 2005 canceled its 1998 surrender requirement that exporters convert half of their hard currency revenues into hryvnias. As of January 2008, foreign currency derived from export sales has to be repatriated within 180 days. Foreign exchange is readily available at market-determined rates, which generally do not vary greatly from the daily official exchange rate. In February 2005, the NBU lifted the 2% limitation on deviation of bank exchange rates from the official exchange rate, which had been in effect since October 2004. A pension fund tax is levied on transactions to purchase hard currency. The Law on the 2008 Budget lowered the tax from 1.0% to 0.5%.

Foreign investors have complained of cumbersome NBU regulations (2005 Resolutions 280 and 281) requiring them to open local accounts in Ukrainian banks and to use the services of Ukrainian brokers in order to make investments in Ukraine. Past direct investors seeking to liquidate and repatriate their investments face stringent documentary requirements, though the NBU has stated its willingness to waive requirements if documents from the original transactions are no longer available. On December 4, 2007, the NBU issued a new regulation requiring nonresident investors who wish to convert dividends or divestment income into foreign currency to provide proof of the initial foreign investment, making such operations more difficult.

Investors convert their earnings into foreign currency through commercial banks, which purchase foreign currency on the electronic inter-bank currency market. Commercial banks may trade foreign currency in electronic form with other banks through participation in electronic inter-bank currency market, regulated and operated by the NBU. To purchase hard currency, companies must provide their banks with a copy of their foreign trade contracts. In an attempt to expedite purchases of hard currency, in March, 2005, the NBU cancelled the requirement that companies obtain State Tax Administration permission to purchase hard currency. Commercial banks must announce their clients' intentions to sell on inter-bank currency market if the transactions exceeded \$500,000. The Law "On the Circulation of Promissory Notes" provides an opportunity for payments in foreign currency and issuance and circulation of promissory notes, in accordance with the 1930 Geneva Convention "Providing a Uniform Law for Bills of Exchange and Promissory Notes." Residents may transfer up to USD 600 abroad without opening a bank account. Illegal trade of hard currency is not a criminal matter but brings administrative penalties.

A.3. Expropriation and Compensation

Under the 1996 Law "On the Regime of Foreign Investment," a qualified foreign investor is provided guarantees against nationalization, except in cases of national emergencies, accidents, or epidemics. Expropriation of property is

rare. International institutions have recommended that definitions of expropriation and nationalization in the foreign investment law and bilateral treaties be expanded to include indirect and creeping expropriation. Courts can determine whether owners of privatized enterprises failed to pay for an enterprise or to implement investment commitments in a privatization sale. Failure to pay or invest allows the GOU, with court permission, to revoke ownership and resell the property.

A.4. Dispute Settlement

EXTENT AND NATURE OF INVESTMENT DISPUTES

The Embassy continues to provide advocacy on behalf of U.S. investors. For many years, investment disputes frequently have involved key problems with the investment climate such as the lack of adequate rule of law, fair and impartial dispute resolution mechanisms, and enforcement of domestic court and international arbitration decisions. Another problem is poor corporate governance (inadequate protection for shareholder rights, inadequate disclosure, asset-stripping, and voting fraud). Currently, there is no single point of contact in the Ukrainian government tasked to help resolve business and investment disputes involving foreign companies, although the Ukrainian Center for Foreign Investment Promotion, a state body commonly known as InvestUkraine (<http://www.investukraine.org>), has pledged to take on this role. Most U.S. businesses have little confidence in Ukrainian courts. Commercial contracts may permit the parties to use international arbitration or specified foreign courts to settle disputes. Though Ukrainian legislation recognizes international arbitration decisions, in practice such decisions can be very difficult to enforce in Ukraine.

Corruption continues to lie at the heart of many investor disputes. Laws and regulations are vague, with considerable room for interpretation, providing officials at every bureaucratic layer ample opportunities for rent seeking.

DESCRIPTION OF UKRAINE'S LEGAL SYSTEM

Ukraine has a civil law system relying on codes and separate legislative acts. The court system comprises the Constitutional Court, which interprets the Constitution and laws of Ukraine, and a system of courts of general jurisdiction. The courts of general jurisdiction are further divided into general courts, which handle civil, criminal, and administrative matters, and specialized commercial courts, which review business disputes, bankruptcy, and anti-monopoly cases. Both the general and commercial court systems feature a hierarchy of local and/or regional courts and appeals courts. The Supreme Court of Ukraine is the highest court in the system of courts of general jurisdiction.

The Law "On the Judiciary," in force as of June 2002, creates four levels of courts -- local courts, courts of appeal, courts of cassation (higher specialized courts), and the Supreme Court. This law also establishes an independent judicial department, the State Judicial Administration, to manage the court system, with the exception of the Supreme Court, which is self-administered. There is also a separate system of Administrative courts, and the Supreme Administrative Court started its work in 2005. The Administrative Procedural Code, which entered into force on September 1, 2005, governs the organization and work of the administrative courts.

ENFORCEMENT OF RIGHTS

Investors criticize Ukraine's legal system for its inefficiency, burdensome procedures, unpredictability, corruption, and susceptibility to political interference. Even when they obtain favorable decisions, investors claim the decisions are often not enforced. The enforcement

responsibilities fall under the State Enforcement Service, which reports to the Ministry of Justice, but whose head is appointed by the Cabinet of Ministers.

The procedure for recognizing and enforcing foreign court decisions is regulated by Section 8 of the Code of Civil Court Procedures of Ukraine. In accordance with the Code, a foreign court decision is recognized and enforced in Ukraine if such recognition and enforcement is provided for in international treaties, the mandatory nature of which has been endorsed by the parliament, or based on a mutual ad-hoc agreement with a foreign state whose court has rendered a decision that is to be enforced in Ukraine.

The State Enforcement Service implements decisions rendered by foreign courts and arbitration tribunals in accordance with the Law "On Enforcement Proceedings." The Law "On Implementing Decisions and Applying Practices of the European Court of Human Rights" entered into force on March 30, 2006. Along with a subsequent Cabinet of Ministers implementing Resolution, the law obligates the Ministry of Justice to ensure implementation of the Court's decisions.

COMMERCIAL LAW

A new Civil Code and a competing Commercial Code both went into effect on January 1, 2004. Lawyers and judges have since grappled with how to implement the two conflicting laws. Despite heavy criticism of the Commercial Code by businessmen and GOU officials, Parliament has not yet taken action to amend or annul it. The Civil Code ensures protection of the rights of private property, of engaging in contracts, and of entrepreneurial activity. It provides a unified framework for economic regulations.

The Civil Code is generally market-oriented and modern, but the Commercial Code is often contrary to market economy principles and directly contradicts provisions of the Civil Code in numerous instances. The Commercial Code aims to preserve a privileged position for the public sector of the economy and allows for governmental interference in private commercial relations. Further, in both codes gaps in regulation exist. The existence of these two codes creates uncertainty in planning and structuring transactions, and leaves questions surrounding transactions unanswered. Problems arising from these two codes also surface in the resolution of disputes, as courts are not able to resolve the conflicting provisions of the codes, or are not able to fill in the gaps in regulation that arise as a result of the missing provisions in the codes. Finally, other commercial laws have not been harmonized with these codes.

A 1999 bankruptcy law provides for debtor-led reorganization, a meaningful moratorium on payment and collection of pre-existing debt, and a tax forgiveness provision. The 1999 law provided thousands of heavily indebted industrial enterprises with an alternative to liquidation that did not exist under Ukraine's original 1992 bankruptcy law. Since then, many firms have reached amicable settlements with their creditors and established a workable schedule of debt forgiveness and repayment. Creditors protect their rights under the law by electing a creditors' committee, which is actively involved in the bankruptcy proceedings.

Most observers believe the bankruptcy laws must be amended to provide more protection for creditors. Notice provisions, protections for the rights of minority shareholders, and procedures for valuation and the sale of assets to satisfy liabilities are undeveloped.

CORPORATE GOVERNANCE

Problems with corporate governance in Ukraine involve corporate ownership, shareholder rights, transparency, and disclosure. The Law "On Companies" offers scant protection for minority shareholders against insider dealing, asset stripping, profit skimming, and share dilution. Corporate

finance is restricted. Some examples of shareholder rights abuses include limited disclosure, capital restructuring without shareholders' consent, and shareholder voting fraud. Nevertheless, a Company Register that was established in 2004 improved transparency. A new Joint Stock Company law was first drafted in 1998 to improve the current law by introducing sound corporate practices that meet international standards. It has failed repeatedly in Parliament, despite increasing interest in the business community. In May 2007, Parliament passed the latest version of this draft law in the first reading, but a protracted political crisis prevented the law from moving forward.

BINDING INTERNATIONAL ARBITRATION

Ukraine enacted an international commercial arbitration law in February 1994, which parallels commercial arbitration laws set forth by the United Nations Commission on International Trade Law. Ukraine is a member of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitration Awards. Some investors have problems enforcing foreign arbitration awards in Ukraine. Foreign arbitral award enforcement procedures in Ukraine are regulated by a number of statutes and regulations, including the Section 8 of the Civil Procedural Code and a law "On Enforcement Proceedings." In early 2000 Ukraine ratified the Washington Convention, providing for use of the International Center for Settlement of Investment Disputes (ICSID), an internationally recognized mechanism for resolving investment disputes between investors and the GOU. The U.S.-Ukraine Bilateral Investment Treaty (BIT), signed in November 1996, recognizes arbitration of investment disputes before the ICSID. One major investment dispute involving a U.S. company was resolved in May 2006 through a combination of direct consultations with the Ukrainian government and international arbitration by ICSID.

A.5. Performance Requirements/Incentives

PERFORMANCE REQUIREMENTS

There are no known cases of performance requirements imposed on foreign investors other than those clearly spelled out in privatizations conducted via open tender. Ukraine has pledged to eliminate measures that conflict with the WTO Agreement on Trade-Related Investment Measures (TRIMs) in the automobile industry and other sectors in the context of its accession efforts.

INVESTMENT INCENTIVES

Ukraine modified its foreign investment law of 1996 to provide foreign investors a number of state guarantees, the most important being the unhindered and immediate repatriation of profits and stable regulations for the time of the investment. Foreign investors are exempt from customs duties for any in-kind contribution imported into Ukraine for the company's charter fund. Some restrictions apply and import duties must be paid if the enterprise sells, transfers, or otherwise disposes of the property.

VISA/WORK PERMIT REQUIREMENTS

According to Ukrainian Presidential Decree No. 1008 dated June 30, 2005 (with amendment dated August 18, 2005), U.S. citizens traveling to Ukraine on short-term tourist, business, or private travel do not need a visa to enter Ukraine. Visas are still required of other categories of travelers including those who intend to study, reside, or work in Ukraine. Short-term travelers entering Ukraine under the auspices of this decree can stay in Ukraine up to 90 days during a 180 day period. Any requests for extension of stay due to extenuating circumstances should be directed to the Ministry of Interior's Department of Citizenship, Immigration and Registration (formerly known as OVIR). Extensions are not automatic, however, and are

valid only for continued presence in the country. It is not possible to depart Ukraine and return on the extension, nor can an adjustment to visa status be made from within Ukraine. Visas may be obtained from the Consular Office of the Embassy of Ukraine in Washington, D.C., or from Ukrainian Consulates General in New York, Chicago, or San Francisco.

Ukrainian law requires that foreign residents of Ukraine register with local authorities. American travelers entering Ukraine under the visa-free regime do not have to register any stays of 90 days or less. Travelers entering Ukraine on a visa must register after six months' stay in Ukraine. Registration is done at the local offices of the Department of Citizenship, Immigration, and Registration.

All foreigners -- except those with permanent residency status -- are required to have a work permit to work in Ukraine. The Laws of Ukraine "On Population Employment" and "On the Legal Status of Foreigners" define the procedures for obtaining a permit at the State Employment Service. Cabinet of Ministers Resolution #917 from July 11, 2007 introduced some changes to the rules surrounding work permits, although implementation of this new regulation has been unclear and inconsistent.

Resolution #917 states that, if a foreigner intends to travel to Ukraine for employment, the employer in Ukraine must obtain a work permit from the Ministry of Labor. The foreigner should then apply at a Ukrainian Consulate for an IM-1 visa. After the applicant enters Ukraine, he/she should submit his/her passport with the IM-1 visa and work permit to the local Department of Citizenship, Immigration, and Registration, which will provide a passport stamp allowing the person to leave and re-enter Ukraine. For stays longer than one year, the employer must apply to the Ministry of Labor for an extension of the work permit. If a foreigner enters Ukraine without a visa, the employer must apply to the Ministry of Labor for a work permit, and, upon approval, the employee must register with the Department of Citizenship, Immigration, and Registration. Spouses/family members of IM-1 visa holders are not automatically entitled to IM-1 status. However, if they intend to stay in Ukraine for more than 90 days, they must have a visa -- most likely a P-1 (private) visa. When the IM-1 visa holder registers his/her work permit at the Department of Citizenship, Immigration, and Registration, he/she should request the same status for family members. Family members will receive a different stamp (most likely a permit for temporary residence) to allow them to stay in Ukraine and travel in/out of the country just like the IM-1 visa holder.

Cabinet of Ministers Instruction No. 892, dated September 12, 2005, extended work permits from one year to the tenure of employment for foreign citizens working in managerial or specialized positions in Ukraine and individuals providing services without their commercial presence in Ukraine. Employers must notify employment centers, police, and the State Committee for Border Protection three days before revoking contracts with foreign nationals.

A.6. Right to Private Ownership and Establishment

The Constitution of Ukraine guarantees the right to private ownership, including the right to own land. A new Land Code consistent with the Constitution was adopted on October 25, 2001. The Land Code provides for foreign ownership of non-agricultural land and clarifies the rights of foreign investors.

The major provisions of the Land Code address the right of individuals to own, buy and sell land. It classifies land into seven categories, based on potential use including agricultural, industrial and natural reserve lands. The mix of state control and ownership rights varies with each type of land. It is easier to own, buy, sell, and mortgage industrial land than agricultural land. A moratorium on

the sale of agricultural land remains in place, and the Land Code also restricts agricultural land purchases by any one legal entity (Ukrainian citizen or Ukrainian-based business) to no more than 100 hectares until 2015. Efforts to cancel the moratorium on agricultural land sale in 2007 failed. The Land Code continues to prohibit foreigners from owning agricultural land directly. The creation of a legal Ukrainian-registered business to purchase and manage land in Ukraine is not prohibited. The Land Code codifies the state's right to oversee private land transactions via registration, the court system, and dispute mediation, as well as broad government/state rights to "influence" the land market. In 2003, Parliament adopted a new law on mortgages that allows the use of agricultural land as collateral and spells out foreclosure and eviction procedures.

Ukraine's Law "On Ownership" recognizes private ownership and includes Ukrainian residents, foreign individuals, and foreign legal entities among those entities able to own property in Ukraine. It permits owners of property (including foreign investors and joint ventures) to use property for commercial purposes, to lease property, and to keep the revenues, profits, and production derived from its use. The Law "On Ownership" is not comprehensive and mechanisms for the transfer of ownership rights are weak. Some difficulties have arisen when foreigners acquire majority control of enterprises, with the government or the current management in some cases continuing to exercise effective control of company decisions.

End Text of Part I.

TAYLOR